

Earth Science and Technology Corporation
ENG BCA No. 6350

Jurisdiction - Equal Access to Justice Act -- The Equal Access to Justice Act (5 U.S.C. § 504(a) (EAJA)), permits the discretionary award of fees and expenses to a prevailing party other than the United States. An award under EAJA may be made only by an agency of the Federal Government (see also 5 U.S.C. § 504(c)). The Washington Metropolitan Area Transit Authority is not a Federal agency, and is not subject to the provisions of EAJA. There is no jurisdiction for the Board to award fees and expenses to appellant under EAJA.

THE CORPS OF ENGINEERS BOARD OF CONTRACT APPEALS

Appeal of)	
)	
EARTH SCIENCE &)	
TECHNOLOGY CORPORATION)	ENG BCA No. 6350
)	
Contract No. FG3088)	

APPEARANCE FOR APPELLANT: Thomas J. Pearson, Esq.
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APPEARANCES FOR RESPONDENT: Cheryl C. Burke, Esq.
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**OPINION BY ADMINISTRATIVE JUDGE PETROWITZ
ON
RESPONDENT'S MOTION TO STRIKE**

Respondent has filed a Motion to Strike all portions of Appellant's complaint requesting relief under the Equal Access to Justice Act (5 U.S.C. § 504 (EAJA)). The Equal Access to Justice Act provides that an agency of the United States Government (5 U.S.C. § 551) that conducts an adversary adjudication may award to a prevailing non-government party reasonable fees and expenses incurred in connection with that proceeding unless the adjudicative officer of the agency finds that the agency's position was substantially justified, or the Appellant does not qualify for an award.

Respondent's motion must be granted for the following reasons:

1. This appeal by Appellant does not involve an agency of the United States Government. The Washington Metropolitan Area Transit Authority (WMATA) is not an agency

of the Federal Government. It is the administrative, construction and operating arm of an authority formed by a compact entered into by the governments of Maryland, Virginia and the District of Columbia (P. L. 89-774; classified to the D. C. Code, Section 1-2431, Title III). See 5 U.S.C. § 504(a) and (c).

2. The authority of the Corps of Engineers Board of Contract Appeals to hear and decide administrative appeals involving the Washington Metropolitan Area Transit Authority contracts is found in the agreement between the Corps of Engineers and WMATA. The agreement confers authority on the Board to hear and decide appeals from the final decisions of WMATA contracting officers pursuant to the provisions of the Disputes Clause of WMATA contracts. The agreement and the Disputes Clause make no reference to the Federal Equal Access to Justice Act, and relief under that Act is not available to the Appellant.

Since the Board has no authority to grant relief under the provisions of the Federal Equal Access to Justice Act in this appeal, Respondent's Motion is GRANTED. All portions of the Appellant's Complaint pertaining to EAJA are hereby stricken.

Date: April 22, 1999

HAROLD C. PETROWITZ
Administrative Judge

I concur.

I concur.

REBA PAGE
Administrative Judge
Chairman

DONALD W. FRENZEN
Administrative Judge

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I certify that the foregoing is a true copy of the Corps of Engineers Board of Contract Appeals Decision in the Appeal of Earth Science and Technology Corporation, ENG BCA No. 6350, under Contract No. FG3088.

Date: April 22, 1999

MARYELLEN D. SIMPSON
Recorder